

1
2
3
4
5
6
7 KELEE WILLIAMS,
8 Plaintiff,
9 v.
10 ROBERT HALF INTERNATIONAL INC.,
11 Defendant.

Case No. 20-cv-03989-KAW

**PRETRIAL CONFERENCE
TENTATIVE RULINGS****I. MOTIONS IN LIMINE**

12
13 Relevant evidence is any evidence that has any tendency to make a fact that is of
14 consequence to the determination of the action more or less probable than it would be without the
15 evidence. Fed. R. Evid. 401. The Court has discretion to “exclude relevant evidence if its
16 probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the
17 issue, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative
18 evidence.”

<u>MIL</u>	<u>Motion</u>	<u>Ruling</u>	<u>Reason/Explanation</u>
21 22 23 24 25 D ₁	Exclude fax from Ms. Williams' counselor, Kathleen Alberts, to Broadspire dated October 1, 2020	DENY	Plaintiff may introduce the fax into evidence to demonstrate that Plaintiff's therapist had submitted the form to show pretext.
26 27 28 D ₂	Exclude evidence of actions by the Illinois Department of Employment Security (“IDES”)	GRANT	The IDES Determination Letter may not be used as evidence in this proceeding. 820 Ill. Comp. Stat. 405/1900.

United States District Court
Northern District of California

1	2	3	4	5	D ₃	Exclude evidence of communications between Ms. Williams and RHI's third party administrator, Broadspire	DENY	Defendant's request is overbroad. Although Defendant characterizes these communications between Plaintiff and a third-party as irrelevant, Plaintiff's allegations of Defendant's improper interference with her benefits request make the communications relevant to the remaining retaliation claims.
6	7	8	9	10	D ₄	Exclude evidence of whether RHI paid Ms. Williams less than men for similar work or RHI's compensation to its employees prior to August 18, 2019	GRANT	Discriminatory conduct occurring prior to the limitations period may be considered as part of the continuing violations doctrine in support of a hostile work environment claim. Plaintiff nowhere argues that differential pay amounted to harassing conduct, nor does she show that differential pay is a relevant consideration to the hostile work environment assessment. Evidence of differential pay prior to the limitations period is thus irrelevant.
11	12	13	14	15	D ₅	Exclude evidence of the reasons why Chris Brinkman left RHI	DENY	The harassment of other women by Plaintiff's former direct supervisor is "relevant and probative" of the supervisor's hostility toward women. <i>Heyne v. Caruso</i> , 69 F.3d 1475, 1480–81 (9th Cir. 1995). Plaintiff's admission that Brinkman did not harass her does not preclude consideration of his maltreatment of other women in the Court's hostile environment assessment.
16	17	18	19	D ₆	Exclude evidence of settlement communications between counsel Ellen Bronchetti and Seth Rafkin	DENY	The email correspondence does not constitute confidential settlement communications under Rule 408(a). Defendant's counsel does not exhibit an offer of valuable consideration in compromising or attempting to compromise the claim. Fed. R. Evid. 408 (a)(1). Defense counsel emailed Plaintiff's counsel "out of courtesy" (Bronchetti Decl., Ex. 5), not "during compromise negotiations about the claim." Fed. R. Evid. 408(a)(2). The Court does not rule, at this stage, on the authentication of the email correspondence.	

1	D7	Exclude evidence of alleged non-gender- based bullying	DENY	This category of evidence is overbroad. But more importantly, Plaintiff still has claims for retaliation which need not necessarily rely on gender-based bullying.
2	D8	Regarding the Scope of the Parties' Non- Compete Provision	DENY	This is an improper motion in limine that requires the Court to interpret a contractual provision in a vacuum.
3	D9	Exclude evidence of Ms. Williams' Verbal Complaints as Not Protected Activities	DENY	This evidence, in contrast to the evidence excluded under Motion in Limine No. 4, is relevant to a remaining claim. The evidence of Plaintiff's complaints, even verbal complaints, is relevant to her cause of action for retaliation.
4	D10	Exclude evidence of being excluded from meetings and not being provided a mentor as adverse actions	GRANT IN PART, DENY IN PART	Plaintiff does not meaningfully argue that the failure to provide a mentor demonstrates an adverse action, and that category of evidence is accordingly excluded. Evidence of Plaintiff's exclusion from meetings may be introduced as an adverse action. <i>Strother v. S. Cal. Permanente Med. Group</i> , 79 F.3d 859, 869 (9th Cir.1996) (exclusion from meetings and seminars that would have made plaintiff eligible for salary increases qualifies as adverse employment action).
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				

II. EVIDENTIARY ISSUES

A. Plaintiff's Objections

<u>Witness/Evidence</u>	<u>Ruling</u>	<u>Reason/Explanation</u>
Dawn Abbey	SUSTAIN	Abbey was not timely disclosed, and Defendant does not directly respond to Plaintiff's objection to her testimony.
Tom Andreesen	SUSTAIN	Andreesen was not timely disclosed, and Defendant does not establish that his testimony will not result in prejudice.

United States District Court
Northern District of California

	<u>Witness/Evidence</u>	<u>Ruling</u>	<u>Reason/Explanation</u>
1	Gianne Cohoon	SUSTAIN	Cohoon was not timely disclosed, and Defendant does not directly respond to Plaintiff's objection to her testimony.
2	Kerry Daley	SUSTAIN	Daley was not timely disclosed, and Defendant does not establish that her testimony will not result in prejudice.
3	Kim Lampo	SUSTAIN	Lampo was not timely disclosed, and Defendant does not directly respond to Plaintiff's objection to her testimony.
4	Fran Lιontakis	SUSTAIN	Linotakis was not timely disclosed, and Defendant does not directly respond to Plaintiff's objection to her testimony.
5	Colleen Tanaka George	SUSTAIN	Tanaka George was not timely disclosed as a witness, Defendant does not establish that her testimony will not result in prejudice. Additionally, her intended testimony appears redundant.
6	Martha Tinajero	OVERRULE	Though disclosed late, the identification of Tinajero can hardly be surprising to Plaintiff. It appears Plaintiff was aware of Broadspire's relevance, particularly where Plaintiff subpoenaed materials from Broadspire in April 2021 and Plaintiff's counsel interacted with Tinajero. <i>See</i> Dkt. 150-2 at 86.
7	Todd Price	SUSTAIN	Price was not timely disclosed. Although Defendant intends to ask only that he authenticate certain documents, which might not result in prejudice to Plaintiff, those documents were also disclosed well after the close of discovery.
8	Leslie Rife	SUSTAIN	Rife was not timely disclosed, and Defendant does not establish that her testimony will not result in prejudice.
9	Stephanie Sweet	SUSTAIN	Sweet was not timely disclosed, and Defendant does not establish that her testimony will not result in prejudice.
10	Radhika Tatavarthy	SUSTAIN	Tatavarthy was not timely disclosed, and Defendant does not establish that her testimony

	<u>Witness/Evidence</u>	<u>Ruling</u>	<u>Reason/Explanation</u>
1			will not result in prejudice.
2			
3			
4	Jill Thompson	SUSTAIN	Thompson was not timely disclosed, and Defendant does not establish that her testimony will not result in prejudice.
5			
6			
7	Exhibit A-28-32, 36-42 (Applications for MBS – VP position)	OVERRULE	Plaintiff objects for lack of relevance, but the qualifications of other candidates for the position she was denied are relevant to Defendant's legitimate business reasons defense. The Court does not yet rule on the exhibits' foundations and authenticity. Disclosure of documents late within discovery period (as opposed to after close of discovery) does not render disclosure untimely.
8			
9			
10			
11	Exhibit A-98-100 (Personnel files of other applicants to MBS – VP position)	SUSTAIN	Documents were not produced until December 13, 2022, well after the close of discovery.
12			
13			
14			
15	Exhibits A-106-109 (LinkedIn profiles and Todd Price affidavit)	SUSTAIN	Documents were not produced until December 19, 2022, well after the close of discovery.
16			
17			
18	Exhibits A-110 (Total award base salary schedule)	OVERRULE	Though disclosed late, Plaintiff cannot be surprised by this Exhibit, something within her knowledge and underlying certain of her claims in this lawsuit.
19			
20	Exhibit A-111-122 (Broadspire Files)	SUSTAIN	Documents were not produced until December 19, 2022, well after the close of discovery.
21			
22			
23			
24	B. Defendant's Objections		
25			
26			
27			
28			

	<u>Witness/Evidence</u>	<u>Ruling</u>	<u>Reason/Explanation</u>
24			
25	Jennifer Burgstiner, Ellen Bronchetti, Vicki Gunn	SUSTAIN	None of these witnesses were timely disclosed, and Plaintiff does not establish that their testimony will not result in prejudice.
26			
27			
28	RHI Records Custodian	OVERRULE	Plaintiff may call Defendant's custodian of records to authenticate materials produced for

United States District Court
Northern District of California

<u>Witness/Evidence</u>	<u>Ruling</u>	<u>Reason/Explanation</u>
		trial. Defendant suffers no prejudice by authenticating its documents.
Broadspire Records Custodian	OVERRULE IN PART, SUSTAIN IN PART	Plaintiff may call Broadspire's custodian of records to authenticate materials produced for trial. However, Plaintiff may not pursue questioning regarding Broadspire's allegedly insufficient response to Plaintiff's earlier subpoena. The time has passed for Plaintiff to compel such responses.
Carlos Fraga	OVERRULE	Fraga's testimony regarding compensation at RHI is not irrelevant given the remaining scope of Plaintiff's Title VII claim and its inclusion of differential pay.
Exhibits 3, 5 (incomplete email strings)	SUSTAIN	Plaintiff acknowledges that the email chains are incomplete and states her willingness to supplement the Exhibits with the missing pages. Plaintiff is ORDERED to provide the full email chain if she intends to present the Exhibits into evidence.
Exhibit 10 (Convention Agenda relating to Resilience in Action dated September 23, 2021)	OVERRULE	Exhibit was not disclosed late. Rather, it was previously disclosed in evidence as an exhibit in Tim Hurd's deposition.
Exhibit 13 (envelope addressed to Ms. Williams from Gregory Mathurin postmarked June 10, 2020)	OVERRULE	Exhibit was not disclosed late. It was an exhibit to Plaintiff's opposition to Defendant's Motion for Summary Judgment. (ECF 97, Ex. B.)
Exhibit 17 (email correspondence between counsel for Ms. Williams, Seth Rafkin, and Vicki Gunn of Broadspire's in-house legal team from April 7, 2021, to May 4, 2021)	OVERRULE	Exhibit was not disclosed late. It was an exhibit to Plaintiff's opposition to Defendant's Motion for Summary Judgment.
Exhibit 19 (email correspondence between Mr. Rafkin and counsel)	OVERRULE	Exhibit was not disclosed late, nor was it a surprise—it is correspondence with Defendant's counsel. Additionally, the correspondence does

	<u>Witness/Evidence</u>	<u>Ruling</u>	<u>Reason/Explanation</u>
1	for RHI, Ellen Bronchetti, from to December 2 to 3, 2020		not constitute a confidential settlement communication. <i>See</i> Defendant's MIL 6.
2	Exhibit 20 (Determination Letter from Illinois Department of Employment Security to Ms. Williams dated February 10, 2021)	SUSTAIN	Determination letter was not disclosed late given that Defendant received a copy of the same correspondence directly from IDES. However, the Determination Letter may not be used as evidence in this proceeding, and it amounts to hearsay. <i>See also</i> Defendant's MIL 2.
3	Exhibit 62 (email correspondence between counsel for Plaintiff, Seth Rafkin, and Vicki Gunn of Broadspire)	SUSTAIN	The exhibit was disclosed late, and Plaintiff does not establish that late disclosure was harmless.
4	Exhibit 89 (W-2 Wage and Tax Statements for Ms. Williams from 2017 through 2020)	OVERRULE	These documents were issued by Defendant, were in Defendant's possession, and notably should have been produced by Defendant pursuant to General Order 71. Though disclosed late, Defendant is not surprised or prejudiced by their consideration.
5	Exhibits 23–25, 65–68, 76, 85 (RHI compensation plans and revenue report)	OVERRULE	These exhibits are not irrelevant. Plaintiff's claims for gender discrimination and retaliation under Title VII, as well as her claim for constructive termination, remain standing. However, evidence of differential pay prior to August 18, 2019, is not actionable, and those portions of the exhibits older than that date will not be considered by the Court. <i>See</i> Defendant's MIL 4.
6	Exhibit 21 (Salesforce Codes)	SUSTAIN	Plaintiff acknowledges that this Exhibit was mislabeled and states that she intends to provide the correct exhibit, the "2018 Reach for the Stars Award," to Defendant and the Court.
7	Exhibit 22 (Chris Brinkman File)	OVERRULE	Defendant argues that Brinkman's discharge is irrelevant to Plaintiff's claims, but Brinkman's alleged harassment of other women may be considered in the Court's hostile environment assessment. <i>See</i> Defendant's MIL 5.

1	<u>Witness/Evidence</u>	<u>Ruling</u>	<u>Reason/Explanation</u>
2	Exhibits 58, 59 (text messages with J. Burgstiner and J. Accardi)	SUSTAIN	These text messages amount to hearsay. Further, they are irrelevant.
5	Exhibit 63 (Plaintiff's Mitigation Summary)	SUSTAIN	The exhibit was disclosed late, and Plaintiff does not establish that late disclosure was harmless.

III. MOTION TO STRIKE

Plaintiff filed her responses to Defendant's objections two days late. (Dkt. 151, Dkt. 152.) Plaintiff's counsel acknowledged that the responses were tardy in a letter to the Court on Sunday, January 22, 2023. (Dkt. 154.) Defendant then moved to strike Plaintiff's late-filed responses to her objections. (Dkt. 155.)

Plaintiff asks the Court not to strike the late-filed responses based on excusable neglect. "To determine whether a party's failure to meet a deadline constitutes 'excusable neglect,' courts must apply a four-factor equitable test, examining: (1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith." *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1261 (9th Cir. 2010) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993)).

Given the mere two-day delay and the fact that no subsequent deadlines were impacted, the good faith calendaring mistake by Plaintiff's counsel constitutes excusable neglect that does not result in prejudice to Defendant. Therefore, the Court will DENY Defendant's Motion to Strike Plaintiff's Responses to Defendant's Objections.

IT IS SO ORDERED.

Dated: January 31, 2023


KANDIS A. WESTMORE
United States Magistrate Judge